

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

J.L. and M.L., et al.,

Plaintiff(s),

v.

MERCER ISLAND SCHOOL DISTRICT,

Defendant(s).

NO. C06-494P

ORDER ON MOTION TO STAY

The above-entitled Court, having received and reviewed:

1. Defendant's Motion to Stay (Dkt. No. 43)
2. Plaintiffs' Response to Motion to Stay (Dkt. No. 45)
3. District's Reply in Support of Motion to Stay (Dkt. No. 46)

and all exhibits and declarations attached thereto, makes the following ruling:

IT IS HEREBY ORDERED that the motion is DENIED.

Defendant provides no statutory or case authority for their request to stay this Court's order remanding the matter to the Administrative Law Judge (ALJ) pending the Ninth Circuit's consideration of the appeal of that order. In opposition to the stay, Plaintiffs cite Shapiro By & Through Shapiro v. Paradise Valley Unified Sch. Dist. No. 69, 152 F.3d 1159 (9th Cir. 1998). The case holds that IDEA administrative proceedings on remand from the District Court must be completed before they may be considered an appealable final order.

Defendant's response is to cite dicta from Shapiro concerning "unusual circumstances in which [the courts] treat a remand order as final for the purposes of appeal." Id. at 1160. The District then attempts to characterize the "unusual circumstances" of this case by claiming that appellate review will somehow be foreclosed if a stay and interlocutory appeal are not permitted. Defendant's argument

1 that “[o]nce the ALJ replaces her original findings and conclusion the District will be unable to premise  
2 an appeal on those original findings...” (Reply, p.2) does not make sense, as the appellate process will  
3 continue to provide the parties opportunities to request review of all phases of this proceeding.

4 Defendant’s motion for stay will be DENIED.

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6 The clerk is directed to provide copies of this order to all counsel of record.

7 Dated: April 5, 2007

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10 Marsha J. Pechman  
U.S. District Judge